Either way you look at it, Miranda rights in need of an update

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Established in Miranda v. Arizona 47 years ago, the you-have-the-right-to-remain-silent litany has “become part of our national culture,” as the Supreme Court noted in a 2000 ruling that reaffirmed Miranda.

My favorite example: In the 1987 film “Robocop,” the eponymous cyborg hero grabs a murderer by the lapels, growls, “You have the right to an attorney” — and hurls the creep through a plate-glass window.

Today, the issue is how, or whether, to apply Miranda to Dzhokhar Tsarnaev, the surviving suspect in the Boston Marathon bombing. The Obama administration advocates a “public safety” exception that would permit the interrogation of terror suspects for a while before “Mirandizing” them and allow the government to introduce the resulting information at trial.

That puts the administration between some Republican senators who want to dispense with Miranda and designate Tsarnaev an “enemy combatant,” and civil libertarians who fret that the public-safety exception could set a precedent that ends up nullifying Miranda.

None of these positions is entirely satisfactory. Neither is the Miranda doctrine itself — not anymore. Its fault lines were evident well before 9/11 spawned terrorism-related dilemmas.

There were powerful reasons for the court’s original 5 to 4 ruling. In 1966, police around the country, especially in the South, notoriously coerced confessions, especially from minority suspects. The court knew this from cases such as Brown v. Mississippi (1936), in which several black men from a small town were whipped with leather straps until they confessed to a white man’s murder. Those who cheered Robocop had to be ignorant of this history — or so one hopes.

Before Miranda, the only remedy was after-the-fact court review of “the totality of circumstances” surrounding each confession. Miranda worked preventively, defining legitimate interrogation and enforcing that standard through the “exclusionary rule,” which forbids the use of unlawfully procured statements at trial.

To a great extent, it succeeded. For all their grumbling, law enforcement officials today acknowledge that Miranda may help them by standardizing legally admissible confessions — and enhancing public confidence in the police.

Still, Miranda complicated policing through litigation and the risk of going to trial. At the margin, the warnings probably underprotect innocent defendants and overprotect guilty ones — the latter are often career crooks who know to “lawyer up.”

Miranda did not save the “Central Park Five,” teens who, as a recent Ken Burns documentary showed, confessed falsely to a horrific rape even after New York detectives read them their rights.

Miranda seems an especially awkward fit for the Tsarnaev case. The public interest in pumping him for intelligence is high — to detect bombs elsewhere, to unravel a conspiracy and so on. Insisting on reading him his rights immediately anyway seems formalistic, to say the least.

Meanwhile, the government has little incentive to Mirandize Tsarnaev at all, given that the evidence against him seems overwhelming even without a confession. In this case, the Obama administration’s public-safety exception seems like a legalistic attempt to preserve the admissibility of evidence it might not even need.

Yet invoking it may enshrine an exception far more expansive than the one created by the 1984 Supreme Court case upon which the administration’s legal theory rests. In that case, the interrogation consisted of immediately asking a hurriedly arrested rape suspect, “Where’s the gun?”

Maybe someday the Supreme Court will sort it all out, just as it has attempted to fit a host of other unforeseen applications into the Miranda paradigm over the years.

Wouldn’t it be better to achieve the necessary and legitimate purposes of Miranda through more efficient means? One alternative made possible by evolving technology would be to require video recording of all in-custody police questioning — to deter abuses and to let juries decide if a confession was voluntary.

Updating Miranda won’t be easy, since the Supreme Court already revisited its basic validity in 2000. However, Chief Justice Earl Warren’s opinion in Miranda noted that “it is impossible . . . to foresee the potential alternatives for protecting the privilege which might be devised by Congress or the States.” Warren disavowed an intent to “straitjacket” federal and state lawmakers.

Yes, Miranda warnings are part of our national culture. But today that culture includes technological capabilities and terrorist threats that the Supreme Court of 1966, or even 2000, could not foresee.

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